UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA, New York, N.Y.

v. 12 Cr. 732(WHP)

SAMUEL TORRES,

Defendant.

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May 30, 2014
4:15 p.m.

Before:

HON. WILLIAM H. PAULEY III,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: SANTOSH ARAVIND
Assistant United States Attorney

MEGAN WOLFE BENNETT
Attorney for Defendant

ALSO PRESENT:

KATIE COULSON, Intern U.S. Attorney's Office

(Case called)

MR. ARAVIND: Good afternoon, your Honor. Santosh Aravind for the government. With me at counsel table is Katie Coulson, an intern with our office.

THE COURT: Good afternoon, Mr. Aravind.

MS. BENNETT: Good afternoon, your Honor. Megan Bennett on behalf of Samuel Torres. Mr. Torres is seated to my right.

THE COURT: Good afternoon, Ms. Bennett.

I note the presence of defendant Samuel Torres at counsel table.

This matter is on for sentencing. Are the parties ready to proceed?

MR. ARAVIND: Yes, your Honor.

MS. BENNETT: Yes, your Honor.

THE COURT: Ms. Bennett have you reviewed with your client the presentence investigation report?

MS. BENNETT: Yes, your Honor, we reviewed it.

THE COURT: Are there any factual matters set forth in the report that you want modification or correction?

MS. BENNETT: Yes, as I outlined in the sentencing submission, there are a number of paragraphs in the narrative that I wouldn't say warrant correction, but that we have asked be eliminated from the narrative because we don't believe that they are relevant for purposes of the sentencing and they will bear on both the designation and security classification decisions made by the Bureau of Prisons. Those are paragraphs 15 through 23, 26, 27 through 29, 31 through 33 and 69 through 71.

Does the court wish to hear anything from defense on those paragraphs beyond what's set forth in the sentencing submission?

THE COURT: Mr. Aravind.

MR. ARAVIND: Your Honor, we would oppose that application. The offense conduct is a conduct of the defendant, as well as other members of the narcotics conspiracy. We believe it is appropriate. It is done in all these types of larger cases to have a lengthy offense conduct that sets forth how the conspiracy exists, what the individual players are, and then specific paragraphs that deal with particular defendants like Mr. Torres. So we believe it is entirely appropriate to have that entire offense conduct as part of the PSR, and we would oppose the defense application.

MS. BENNETT: In response to that, I would note that Samuel Torres pled guilty to participating in a conspiracy to distribute 280 grams or more of crack cocaine. Many of the codefendants were charged and entered pleas of guilty to drug conspiracies involving other substances with which Mr. Torres was not alleged to have had any participation. To the extent that paragraph 15 for example includes factual allegations regarding the powder cocaine and the oxycodone and the marijuana conspiracy, as do paragraphs 15 and 17, those have no bearing on the conspiracy or those factual allegations within those paragraphs don't have a bearing on the conspiracy to which Mr. Torres has entered a plea of guilty. The paragraphs concerning the arrests of the codefendants, I understand the government likes to include more rather than less, but I don't see how those arrests have any relevance to the underlying criminal conspiracy to which Mr. Torres has entered a plea of guilty. And I don't see any sentencing purpose here. It simply embellishes and enlarges the presentence report with no legitimate purpose.

MR. ARAVIND: Your Honor, I think there is certainly a legitimate purpose.

THE COURT: I do, too.

Ms. Bennett, this court disagrees with you. Paragraphs 15 to 23 and 26 provide a descriptive narrative of coconspirator conduct that provides background and context necessary in evaluating the nature of the offense; and paragraphs 27 through 29 and 31 through 33 simply detail codefendant arrests and are relevant. Finally, I have reviewed your submission, so your objection to paragraphs 69 through 71, setting forth additional arrests of Torres, at least one of which appears may still be pending, is also denied. Those are relevant matters for the court to consider.

MS. BENNETT: If we could move on to the criminal history calculation.

THE COURT: Sure. Before we do, I just want to make certain from the government, are there any factual matters in the presentence report that the government believes warrant modification or correction?

MR. ARAVIND: No, your Honor.

THE COURT: All right. You may proceed to the criminal history issue.

MS. BENNETT: Moving on to the criminal history calculation as set forth in both the defense sentencing submission and the government's response, the PSR characterization of the June 29, 2004 juvenile delinquency adjudication, we object to the inclusion of the two points attributed to that adjudication. There are no records available at the time that the parties entered into the plea agreement, it wasn't clear whether or not we would have access to additional information that might provide support for considering that delinquency for purposes of the criminal history calculation. There are no records available.
Mr. Torres spent time in a reformatory. The second Circuit has stated that when considering youthful or juvenile adjudications, the sentencing court should look at the facts underlying that adjudication; and, in the absence of any facts suggesting or telling us what exactly was the basis for the

delinquency, I would argue -- I do argue that there is not a sufficient basis for awarding, sort of a preponderance of the evidence for which those two points should be added to Mr. Torres's criminal history calculation.

I have a couple other points on criminal history calculation overall. Do you want me to address those?

THE COURT: Let's focus on this one first.

Do you have any information that would support the argument that this adjudication did not constitute a "confinement."

MS. BENNETT: Do I have any support about that?

THE COURT: Yes.

MS. BENNETT: I have the information that Mr. Torres was in a group home setting; that he had been removed from his mother's residence and was placed in a reformatory environment. But that is primarily -- I tried to get the records from the New York State -- the department that is responsible for maintaining those facilities and was not able to get them, so I don't have additional factual information beyond what is set forth in the presentence investigation report.

THE COURT: Was it a prison-like setting, a detention facility?

MS. BENNETT: I don't believe it was, but I don't want to overstate from the conversations that we had with the probation officer who conducted the presentence investigation report. It sounded like over the period of those 18 months it was a variety of different settings, some of which were more secure than others, but were generally Samuel was moved among those facilities, not because of issues with his behavior, but because of his age, that he was at risk in a more secure facility. He was moved to a less secure facility, but he was going to school, he was being provided with extracurricular activities, his family was able to visit him openly, so I don't know --

THE COURT: That would be true in any setting.

MS. BENNETT: I don't want to overstate, but I -- I don't even know where he was. I could not get that information from the state.

THE COURT: Was he sent there because of the family situation or because of his robbery I adjudication?

MS. BENNETT: I think it was a combination of -- I think it was primarily driven by the arrest that was adjudicated in family court.

THE COURT: The first degree robbery adjudication.

MS. BENNETT: Correct. Well, he was charged with the first degree robbery. I don't even know what the ultimate adjudication was on that, because the records are sealed and I haven't been able to get them.

THE COURT: He had an 18-month sentence, didn't he?

MS. BENNETT: He got sent to a reformatory. At this point he had been moved from a regular classroom to a special education classroom because of emotional problems that were connected with the situation at home. He had been acting out not in a violent way, but in a sufficiently disruptive way in the school environment that I understand there was a file as to his behavior. There were problems with his home environment and that, again, we are speculating, because I don't have access to the record. It is sealed. I can't get any information from the state about the reformatory sentence. But in light of the confluence of factors that were surrounding him at that point in his life, I can't say, I wouldn't feel comfortable saying that he got an 18-month sentence.

THE COURT: Mr. Aravind, what's the government's position?

MR. ARAVIND: Your Honor, I think we set our position in our sentencing submission. Although we gave two points for this juvenile adjudication as part of the plea agreement and that's what the parties stipulated to, upon further review and looking at the cases, given the fact that he was sentenced to reformatory, given the fact that he was 13 years old, given the fact that he was sentenced in Bronx family court as opposed to an adult court --

THE COURT: That's only because he was 13.

MR. ARAVIND: That is correct.

THE COURT: The conviction is first degree robbery.

MR. ARAVIND: And it is a serious conviction. There is no doubt about that. The case law here is not entirely clear. The Driscoll case talks about looking for a variety of factors in determining whether one of these convictions qualifies an adult conviction.

THE COURT: Like the nature of the offense.

MR. ARAVIND: Correct.

THE COURT: And term of confinement, right?

MR. ARAVIND: That's exactly correct, your Honor. I think there are certain factors that weigh in favor of treating this as an adult conviction. There are also other factors that do not. In the absence of --

THE COURT: Which are the factors that do not?

MR. ARAVIND: The factor of the defendant's age and that he was sentenced to a reformatory institution as opposed to an adult penal institution -- although, again, that's a result of his age -- are factors that weigh in favor of not treating this as an adult conviction. Again, we suffer from the same problem that Ms. Bennett does, that we just don't have the records that would show exactly what the conditions of confinement were at that particular facility or what he did precisely in terms of the offense conduct to receive that adjudication. So in light of those factors, your Honor, the government has taken the position that that particular conviction should not be assessed, the two points for criminal history category.

THE COURT: Given this court's lack of specific information about the precise nature of the facilities that the defendant was housed in, I am going to decline to grant the two points here. I do so because the defendant and the government are in agreement. But I would note that a plain reading of Section 2A1.2(d)(2)(A) certainly suggests that a two-level enhancement could be warranted because of the serious nature of the offense and the length of term of confinement. But I don't have enough information about the nature of that lengthy confinement to conclude that it would actually fall as a "confinement," and I put that word in quotes, under 4A1.26789(d)(2)(A).

Next issue.

MS. BENNETT: The next issue the defense raised had to do with the most recent state court conviction for possession of a weapon. I don't want to belabor that point. I think I made our argument in the papers. If the court is inclined to entertain it, I would be happy to address it further, but we ask that it be considered relevant conduct. It fell within the period of the conspiracy, and he was described as having been acting as a lookout at the time that he was arrested, but that's about all I have to say on that point.

THE COURT: Anything further from the government on that?

MR. ARAVIND: No. We oppose that, your Honor. I had a conversation with the ADA who is handling that case. We believe that there is no real connection, or at least none that's been presented to us, in terms of that particular offense and the narcotics conspiracy of which he is charged here. So we don't believe it is relevant conduct, and he should receive the points for that conviction.

THE COURT: This court agrees with the government and probation's assessment of the three criminal history points for the defendant's recent possession of a weapon conviction for which he is currently serving three to six years, so I decline to grant that reduction to defendant.

MS. BENNETT: I think that's all that we have for challenges to the presentencing investigation report.

THE COURT: So for the sake of the record, before you make your arguments, the defendant's criminal history category will be computed to be a IV not, as set forth in the presentence report, a V; and physically we will make the physical change in the presentence report.

MS. BENNETT: Thank you, your Honor.

THE COURT: With that, having dealt with the guidelines, would you like to be heard, Ms. Bennett?

MS. BENNETT: Yes, your Honor.

First I would like to just point out for the court and for the record that in the audience are Mr. Torres' mother, Joanna Ortiz; his sister, Abigail; his cousin, Peter; and a number of family friends who have come today to support him and who will be ready to support him upon his release whenever that is.

I would like to start by addressing Mr. Torres's history and characteristics.

I don't think there is any dispute that the nature of the charges here are serious and that is reflected certainly in the statutory mandatory minimum that is attached to the count to which Mr. Torres has entered a plea of guilty.

With respect to that, I would note only that Mr. Torres's conduct, I believe, in connection with that conspiracy did end some period before his arrest. And I don't want to suggest that he was, by any stretch, any kind of choirboy, but there was a period of time between the end of that conspiracy and his arrest when he showed himself at least not to be participating in the drug conspiracy. That said, we acknowledge how serious the nature of these charges are.

Moving on to Mr. Torres's history and background, as the court knows, from the sentencing submission, Mr. Torres was raised primarily by his mother Joanna, along with his brother Nelson, and his sister Abigail.

When Samuel was a young boy, his mother became involved with a gentleman who, while a supportive partner, inflicted great emotional and physical harm on Mr. Torres.

Around the time that he turned 13, I think you can see from his criminal history record, he began taking it out partly, no doubt, because of the time in his life and the changes that any young person experiences on the brink of adolescence, but also, no doubt, heightened by the nature of the circumstance he was suffering through at home.

He was moved from a regular education classroom into a special education classroom which served primarily to sort of further stigmatize him. He was put on medication to treat what was identified as attention deficit hyperactivity disorder to try to manage his emotional instability.

I think the court can see from his criminal history record that he began to spiral out of control. There was the delinquency finding when he was 13, and then soon after he comes home, when he is around 16 or 17, he gets into some much more serious trouble. While that is an undeniable part of his personal background and it is nothing that he can or wants to turn away from, this also coincides with when he became involved in the drug conspiracy to which he entered a plea of guilty.

He is now 24 years old. He has had periods of time when he has managed to live a more, if not entirely, upright life than in his later teen and early twenties. But he is going to be coming out of prison at some point in his life, and he is going to be facing the need to reenter society as a law-abiding individual.

He has the support of his family members. He has the support of his friends. He has the support of his church and of his larger community. He made the very adult decision at a relatively early stage in this case to enter a plea that he knew carried a sentence of, at a bare minimum, ten years in prison, which is not a small matter for a person who, although he has a meaningful criminal history background, has never served anything like the sort of time that he will be doing in connection with this case.

The government pointed out some of the issues surrounding his conduct in the federal detention facility during the course of this trial. I would like to address that just briefly. The force order to which the government referred in its sentencing memorandum I think was a direct consequence of conflicting information that Samuel was getting as to the interplay between the imposition of a federal sentence and a state sentence; and I think there are other detainees at the MDC who were suggesting that he should be sentenced on the federal case before he would be sentenced on the state case. We ultimately, I think, worked that out and, while there was at least one force order, if not more, that was entered to produce him in state court, that was necessary, not out of a disrespect for the judicial process overall, but I think in part by sort of misguided counsel that he was receiving while he was in the

MDC.

The other incidents that the government has referred to, while not insignificant, this is an adjustment for a person who has never been in federal custody and he was written up for being insolent, which is, again, nothing to be overlooked, but is, I think, attributable in large part to his transition into this stage of his life. I am hopeful that he will be developing the tools to adjust to the adversity that he will be facing during the course of serving the sentence.

There is no question that he will be serving a significant incarceratory sentence on this case. Whether the court sentences him to a guidelines sentence or something below or something above, he is going to be serving no less than a decade in jail. That will serve adequately to protect the public, that will certainly deter Mr. Torres from committing any crimes in the future, and I think it serves to accomplish any general deterrence goals that can be achieved through his sentence.

To the policy arguments I set forth in the sentencing memorandum and I know this court is aware of the impending changes to the guidelines that will likely go into effect with its next iteration, it would have the effect of reducing Mr. Torres's offense level from a 32 to a 30 and would therefore -- he is in criminal history category IV. Instead of 151 to 188, he would be facing a guidelines range of 135 to

168. I would ask that this court take that into consideration and also take into consideration the pending Smarter Sentencing Act, which would reduce the mandatory minimum although, obviously, his guidelines range would nonetheless be above, a new lower mandatory minimum for the charge to which he has entered a plea of guilty. But I ask the court take those into consideration in crafting a sufficient but not greater than necessary sentence here.

The last, I guess, policy issue that I would like to address has to do with whether the court will sentence him to concurrent or consecutive time on this case in relation to the undischarged state sentence that he is currently serving. Mr. Torres was brought into federal custody pursuant to a writ of *habeas corpus ad prosequendum*, meaning that he is now under primary state jurisdiction. He has been in custody since March of 2012 and none of that time will be considered attributable toward his federal sentence. If this court, under 18 U.S.C. 3584(b), doesn't state on the record that his sentence would be concurrent, he will be sentenced to a consecutive period of incarceration, serving first the 3 to 6 years in state prison and then the undischarged federal sentence.

When considering whether or not to impose a sentence consecutively or concurrently, section 3584(b) says the court is to consider those same factors set forth in 3553(a). And I would argue here that the most important 3553(a) factor for the concurrent or consecutive decision has to do with what is going to -- two things, one, the seriousness of the underlying state offense. I know Mr. Aravind has had a conversation with the ADA in that case. I likewise have spoken with the defense counsel. My understanding is that Judge Conviser, who had the state case, had been planning to sentence Mr. Torres to a lesser term, that he ultimately was going to take the case to trial, and that he unfortunately that he bench warranted shortly before that case was about to go to trial. According to his state court lawyer, the sentence that was ultimately imposed on him had everything to do with his disregard for reappearing in court, which is not an insubstantial factor, but did not have anything to do with the seriousness of the offense; that, in fact, Judge Conviser had treated it the way the legislature had treated that charge, which is it was a misdemeanor that was elevated to a felony solely because Mr. Torres had a prior criminal record. He has already now served more than a full misdemeanor sentence than he would be serving as a full misdemeanor sentence had he been convict of the weapons charge without having criminal history background. In light of that, having served over 13 or nearing 15 months now in the state court charge, I would ask that this court consider imposing this term of incarceration to be served concurrent to that undischarged state period.

And on that point, I guess, and in connection with that, I would point out that previously Mr. Torres has served a term of incarceration in state prison in connection with the two overt acts that were listed in the federal indictment here to distribution of a controlled substance and the possession of a weapon, so I would ask that the court exercise some discretion to consider a sentence below the guidelines in light of the fact that Mr. Torres has already served some time for that relevant conduct.

THE COURT: Thank, Ms. Bennett.

Mr. Aravind.

MR. ARAVIND: Your Honor, I think we have addressed every single one of those issues or points raised by Ms. Bennett in our sentencing memorandum, so I don't want to belabor the point, but this is a serious offense. The defendant was a member of a drug conspiracy that was known to engage in violence. He possessed a firearm -- that's what the parties stipulated to -- as part of that drug conspiracy, and he should be sentenced based on the serious nature of the offense.

Turning to the history and the characteristics of this defendant, he has had a remarkable criminal history given his age. He has been committing crimes, serious crimes, since the age of 13, the robbery in the first degree, adjudication that the court was concerned about initially up until very recently, right before his arrest in this case. He has continued to commit crimes throughout, and the government really believes that a significant term of incarceration, a guidelines term, is important to send a message both for Mr. Torres, that he cannot commit other crimes, but also for general deterrence and to protect the public from this particular defendant.

With respect to a couple of the arguments raised by Ms. Bennett, I think that the issue about the concurrent sentence, the government has taken the position that because that is not relevant conduct and because of the serious nature of that offense, that this court should in fact sentence Mr. Torres consecutively to that three- to six-year term that was imposed by Judge Conviser. And we took that position based on the conversations that we had with the assistant district attorney. I understand Ms. Bennett has a different view. She spoke to the defense attorney and they have their view, but our position -- and I have seen a photograph of the homemade weapon that was carried by Mr. Torres during that incident -- is that it was a serious offense and that's why he received or in part why he received a significant sentence. I think this conduct presents a picture of Mr. Torres. I know he has got a difficult background, but he repeatedly turns to criminal activity, repeatedly turns to gun possession, repeatedly turns to weapon possession in order to protect himself, and that needs to stop.

Finally, your Honor, it is true that the defendant did receive some credit, not credit, that certain of his criminal convictions were treated as relevant conduct to the instant offense, and certainly this court could fashion a sentence that takes that into consideration. I would just note that he is receiving the benefit in some ways, that the criminal history category does not reflect that robbery conviction for which he was 13 years old and he has other arrests that have not reached any sort of dispositions.

So, taken altogether, given his repeated disregard for the law, given this court's force order, given his inability to adjust in incarceration, I think this court needs to send a message to Mr. Torres that he needs to abide by the law and he needs to spend a significant term of incarceration in jail thinking about it so that when he does get out he will abide by the law.

So unless the court has any particular questions, we would rest on our submissions.

THE COURT: What was the nature of this homemade weapon?

MR. ARAVIND: The photograph that I was shown looked like kind of like a dental scalpel that was attached to something that covered his hand, so it is like a weapon that was protruding from like a glove that was basically fashioned in some way. So that was the type of weapon that he had at the club. The PSR recites the fact that he intended to use that weapon for self-defense, but it certainly was a weapon that was used to injure somebody. That club was apparently a place that was known where violence had been occurring, and that's the information we were provided.

MS. BENNETT: Can I quickly address that?

THE COURT: You will get a chance in just a moment.

Where would the government place Samuel Torres within the conspiracy in terms of his relative culpability compared to the other defendants?

MR. ARAVIND: In terms of simply the charged narcotics conspiracy, because there remains an active murder investigation involving other members of this particular narcotics conspiracy, but just the narcotics conspiracy and weapons possession, I think he is not quite to the level of Mr. Del Valle, who is nicknamed "BD," who sort of ran this crew. But certainly at the next level he is one of the major players. He is someone who was very active and was someone that others in the conspiracy would take direction from. That is the information that we have been able to glean through conversations with cooperating witnesses. So he was certainly not at the top, but he was not at the bottom. I think that we would characterize Mr. Colon's conduct as somewhere near the bottom. I think he is higher than his brother Nelson Torres, but lower than someone like Daniel Del Valle.

THE COURT: Thank you, Mr. Aravind.

Ms. Bennett, you wanted to be heard on the weapon issue?

MS. BENNETT: Just on the weapon. My understanding is that there wasn't -- first of all, I think it is undisputed and Mr. Aravind, if he disagrees I am sure will tell us, but that possession of that weapon, whatever it was, was a misdemeanor if Mr. Torres did not have a criminal history record. If he had walked in with no record and had been arrested with that knife, he could not have been charged with more than a misdemeanor. He could not have been sentenced to more than a year for possession of that weapon. He could have had a conviction for tax fraud, and it would have bumped up the -- it would have allowed the state to charge him in an indictment that is a felony. But the only factor that made him subject to a three- to six-year sentence was the fact of any criminal conviction. There is no evidence that he was intending to use it or that he was displaying it or that he was posing a threat to anybody at that time.

The last thing I would say, not on the weapon point but in terms of his role in sort of the hierarchy of this crew, the government could have asked for an aggravating role enhancement, which they didn't, which I think says something about where he fell in terms of offering direction and guidance. They probably know much more than I do about the nature of the overall conspiracy, but he was not charged with distributing any drugs other than the crack cocaine and the fact that they suggest that he was a member of this conspiracy, but not that he was sort of a director of the conspiracy.

THE COURT: Ms. Bennett, does your client wish to address the court before sentence is imposed.

MS. BENNETT: He does, your Honor.

THE COURT: I will hear from Mr. Torres now.

THE DEFENDANT: In addition to what I wrote, your Honor, I would like to apologize to my family and mother that is right there, out there. Even though I am the one that's physically incarcerated at the moment, I know they are suffering as much as I am, which is my fault and I am truly sorry for everything I have done.

While me being incarcerated, I'll better my education, and I will make sure I get my GED and take full advantage of any vocational programs available in facilities so that I can be able to take those skills out to society with me.

And that's all, your Honor. Thank you for your time and consideration.

THE COURT: The defendant, Samuel Torres, comes before this court having pled guilty to a conspiracy to distribute and possess with intent to distribute crack cocaine, a very serious offense against the United States.

This court reviewed the presentence report and adopts the findings of fact in the report as my own and will cause the report to be docketed and filed under seal as part of the record in this case.

Turning to the guidelines calculation, the defendant acknowledged being involved in a conspiracy and involvement with more than 280 grams but less than 840 grams of crack cocaine. Under the guidelines, that carries a base offense level of 32. Because Mr. Torres possessed a firearm in connection with the offense, two levels are added.

The defendant pled guilty before Magistrate Judge Pitman. I have reviewed the minutes of that plea. I accept Mr. Torres's plea, finding that it is knowing and voluntary; and, accordingly, I grant him a three-level reduction for acceptance of responsibility. So his total offense level is 31.

This court has reviewed his prior criminal history. This court declines to accord two points for the defendant's first degree robbery conviction at the age of 13. This court scores that as a zero. This court attributes three points to his attempted robbery in the second degree conviction and one point for his criminal mischief charge and three points for his criminal possession of a weapon charge. That yields a criminal history category of IV.

MR. ARAVIND: Your Honor, I note that the PSR granted him two points because he committed the instant offense while under a criminal justice sentence. That's at paragraph 65.

THE COURT: Yes. I missed that.

MR. ARAVIND: As we put in our submission, because the criminal mischief conviction was not reflected at all on the defendant's rap sheet, we stand by the plea agreement which did not have any criminal history category points assigned to that conviction. So then I think he gets -- there are two convictions that are three points each, and the government's view that he gets the two points for while under a criminal justice sentence, so that would give him eight points total, which would be a criminal history category of IV. That's our calculation. I don't know whether Ms. Bennett agrees with that or --

MS. BENNETT: There was an issue with the criminal mischief adjudication because it was a youthful offender and it was a discharge, but I don't necessarily agree with the two points for considering the instant offense while under a criminal justice sentence, the difference between eight points or seven points, which, again, either scenario would put him in category IV. I'm sorry. No. It is the same calculation.

Well, if the court were to adopt either the government's position that it wasn't going to include a criminal mischief conviction because it hadn't been part of the plea agreement or finds that it wasn't counted because it was a youthful offender adjudication without an incarceratory sentence, under either path he would end up with seven criminal history category points.

THE COURT: I am counting it, and it is academic here. I am counting it. For the record, I come to nine criminal history points, which is category IV. And, once again, working backwards, it is two points because the instant offense was committed while he was under a criminal justice sentence; three points for his criminal possession of a weapon on January 5, 2012; one point for criminal mischief conviction on November 29, 2006; and three points for his attempted robbery conviction on October 15, 2006.

So with a criminal history category of IV and a total offense level of 31, the defendant faces a sentence of 151 to 188 months under the sentencing guidelines. This court also notes that this crime carries a mandatory minimum sentence of 120 months.

Turning to the 3553(a) factors, there is a very significant need for deterrence, specifically of Mr. Torres. As counsel have acknowledged and as all the documentation before the court reveals, Mr. Torres spun wildly out of control at the age of 13. I understand that he had a very difficult situation at home. His mother certainly tried to help him. I am sure that that became far more difficult for her to do when he was housed in remote facilities as a juvenile. And I note that just the effort of traveling six or seven hours to some place in upstate New York in order to see her son on the weekend had to be grueling, and today has to be a very sad day for his family and friends who are here in the courtroom.

He is a young man. He needs some very serious socialization. He has got a lot of anger management issues. They started at a very tender age in school, and he must have been a real terror. He got himself involved in very, very serious, dangerous, violent conduct.

He is going to be taken out of circulation for a significant period of time, and he needs to be. He needs to get a GED. He needs to learn how to behave as an individual and citizen in a civilized society, and that's not by carrying weapons and assaulting people and selling drugs, which of course, the victims of all of that activity are never in the courtroom, Mr. Torres, but we know they are all out there.

This court also recognizes its duty to avoid unwarranted disparities in sentencing and to evaluate this defendant's level of culpability in comparison to others. He is currently serving a significant term of state imprisonment, and it is this court's view, first, that a sentence within the guideline range here is somewhat more than is necessary in this case, given the defendant's age and the fact that he is currently incarcerated on a state sentence. The court also believes, however, that a sentence significantly above the mandatory minimum is necessary here to ensure that Mr. Torres makes the appropriate adjustment into society.

So, Mr. Torres, I am prepared to sentence you at this time, taking all of these factors into account, and I would ask that you stand.

Mr. Torres, this crime is just part of a terrible downward spiral that you made, that you started at least at the age of 13 and probably before then, and you probably had no idea what kind of a downward spiral you were in, especially with the activity that you were engaged in. You are out of control. You are a danger to the community and to yourself, quite frankly. I sense that you have some potential to be a contributing member of society and to make your mother and those in the courtroom who are weeping for you right now proud of you at some point. But you have got a lot to do to do that.

So it is my judgment that you been sentenced to a term of 142 months of imprisonment to be followed by five years of supervised release subject to all the standard conditions of supervised release and the following special conditions:

First, that you participate in a program approved by your probation office to include testing to determine whether you have reverted to using drugs or alcohol. I authorize the release of available drug treatment evaluations and reports to substance abuse treatment providers as approved by your probation officer. You are required to contribute to the cost of services rendered in an amount to be determined by your probation officer based on your ability to pay or the availability of third-party payments.

I am going to require you also to participate in an alcohol aftercare treatment program under a copayment plan to include testing via breathalyzer at the direction and discretion of your probation officer.

I am also going to impose a special condition that you participate in an anger management program upon your release from prison so that we can ensure that your impulses are under control and that they are being addressed by professionals.

And, finally, I am going to require you to submit your person, residence, place of business, vehicle, or any other premises under your control to a search on the basis that your probation officer has a reasonable belief that contraband or other evidence of a violation of the conditions of your release may be found. That search can be conducted at a reasonable time and in a reasonable manner, and your failure to submit to such a search may be grounds for revocation. So you are to notify any other residents of the premises where you reside upon your release that those premises may be subject to search pursuant to this condition. I am also going to impose the mandatory $100 special assessment on you, but I am not going to impose a fine because that would be an exercise in futility.

You are 20-some years old. You have had no employment. It is about time that you start taking responsibility, beginning in prison, for your life. Because if there is any repeat of this kind of conduct, you will be throwing your whole life away and it is all going to be up to you.

So this, Mr. Torres, constitutes the sentence of this court.

I advise you that, to the extent you have not previously waived your right to appeal, you have the right to appeal. I advise you further that if you cannot afford counsel, counsel will be provided to you free of court. Ms. Bennett has done an admirable job representing you in connection with this matter and addressed some thorny legal questions, arcane questions involving the guidelines, to your benefit. So I am confident that she will advise you further with respect to your appellate rights. You may be seated, sir.

Are there any further applications from the government?

MR. ARAVIND: Your Honor, we would move to dismiss the open counts as well as underlying indictments.

THE COURT: The government's application is granted.

Are there any further applications on behalf of the defendant?

MS. BENNETT: Your Honor, I would, as I asked earlier, ask the court to impose the sentence concurrent to any undischarged --

THE COURT: Yes. Thank you for reminding me. I am imposing this sentence concurrent to the undischarged term of imprisonment in his state sentence.

MS. BENNETT: Thank you, your Honor.

And I guess the only other application would be a recommendation to the Bureau of Prisons when he comes into federal custody to place him at facility that will facilitate -- allow his family to visit him.

THE COURT: I will include a recommendation that he be housed at facility as close to the New York metropolitan area as possible.

MS. BENNETT: Thank you, your Honor.

THE COURT: All right.

Mr. Torres, you are going to spend a considerable time in prison. It will be up to you whether you make it a constructive exercise and you truly decide to hit the reset button in your life. But I will tell you that upon your release from prison some years from now, please don't put yourself in the position of coming back before me for a violation of supervised release, because I will be very familiar with the record and if you violate supervised release, you will not be keeping faith with the justice system and I will doll what I believe is right at that time.

Do you understand?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. This matter is concluded.

MR. ARAVIND: Thank you, Judge.

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